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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/588,616

04/13/2007

Dirk Ebbinghaus

CS-8846/BCS043006

7209

34469

7590

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BAYER CROPSCIENCE LP

Patent Department

2 T.W. ALEXANDER DRIVE

RESEARCH TRIANGLE PARK, NC 27709

EXAMINER

KASTURI, SRIRAM

ART UNIT

PAPER NUMBER

1612

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/588,616	<b>Applicant(s)</b> EBBINGHAUS ET AL.	
	<b>Examiner</b> SRIRAM KASTURI	<b>Art Unit</b> 4131	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8-7-06</u> .                                                  | 6) <input type="checkbox"/> Other: _____                          |

Art Unit: 1625

### **DETAILED ACTION**

Claims 6-9 are pending . IDS dated 8-7-06 has been acknowledged and considered. Claims 1-5 are cancelled.

#### **Priority**

Receipt is acknowledged of papers submitted under U.S.C. 119(a)-(d) which papers have been placed of record in the file.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is

Art Unit: 1625

advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Applicants claim a mixture comprising thiacloprid and one or more compounds acrinathrin, alpha-cypermethrin etc of claim 6. They also claim a method of combating animal pests comprising applying an effective amount of mixture containing one or more extenders or surface-active substances. This composition is prepared by mixing the mixture of thiacloprid and one or more compounds of claim 6 (Claims 6-9).

Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seitz et al (US 2005/0014650 A1). This PG PUB claims the priority of PCT/EP02/09866 which was published on March 27<sup>th</sup> 2003 in german (attached) and the english translation of the PCT is used as prior art.

Seitz et al teach delta 1-pyrrolines as pesticides. Their teachings include ready to use compositions comprising insecticides (Page 24, para [0591] lines 1-2). Their preferred mixing partners of insecticides are cypermethrin and thiacloprid (Page 24, para [0593] lines 1-5). Their teachings include use of active compounds including insecticides for controlling animal pests (Page 25, [para 0614] lines 1-7). They additionally teach pesticides comprising one or more

Art Unit: 1625

extenders and/or surface -active substances (Page 62, Claim 51). They also teach method of controlling pests comprising, causing an effective amount of one or more compounds to act on pests and /or their habitat. (Page 62, Claim 52).

Seitz et al clearly disclose the mixture of thiacloprid and cypermethrin. They also disclose mixing of these two insecticides. Their compositions contain extenders and /or surface active substances and these can be used as pesticides to act on pests and on their habitat as explained above and as claimed by applicants (Claims 6-9).

Thus based on Seitz et al teachings, it was obvious to an ordinary skilled artisan to prepare the composition containing a mixture of thiacloprid and cypermethrin with an extender and/or surface-active substance, and to use the composition as a pesticide to combat the pests and their habitat as claimed by applicants.

Thus there is reasonable expectation of success based on the prior teachings as set forth above in the instant office action.

### **Conclusion**

Claims 6-9 are rejected. No claims are allowed.

Art Unit: 1625

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SRIRAM KASTURI whose telephone number is (571)270-5263. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Janet L. Andres/  
Supervisory Patent Examiner, Art Unit 4131

/Sriram Kasturi/  
Examiner